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6 Special Counsel for FRED HJELMESET,
7 Trustee in Bankruptcy

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re

12 EVANDER FRANK KANE,

13 Debtor.
14
15

Case No. 21-50028 SLJ
Chapter 7
Hon. Stephen L. Johnson

16 Adversary Proceeding No: _____

17 FRED HJELMESET,
18 Trustee in Bankruptcy,
Plaintiff,
19 v.

20 SURE SPORTS LLC, FKA SURE SPORTS
LENDING LLC,
21 Defendant.
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COMPLAINT FOR:

**(1) VIOLATION OF THE MILLER
AYALA ATHLETE AGENTS ACT, BUS.
& PROF. CODE §§ 18895, et seq.; and**

(2) DECLARATORY RELIEF

1 For his Complaint against Defendant Sure Sports, LLC, fka Sure Sports Lending, LLC
2 (“Sure Sports”), Plaintiff Fred Hjelmeset, Trustee in Bankruptcy of the estate of the above-named
3 Debtor (“Trustee”), alleges as follows:

4 **SUMMARY OF COMPLAINT**

5 1. Debtor Evander Kane (“Kane”) is a professional hockey player. From February
6 2018 until January 2022, Kane played for the San Jose Sharks of the National Hockey League, and
7 resided in San Jose, CA. Since January 2022, Kane has played for the Edmonton Oilers of the
8 NHL.

9 2. Defendant Sure Sports is, in its own description, “a full service company that offers
10 customized underwriting, banking, and financing solutions for professional athletes.”

11 3. Sure Sports itself is not a lender or bank, but acts as an intermediary—in practical
12 effect a loan broker—to arrange loans and other financing products for professional athletes.
13 However, Sure Sports is not a licensed loan broker in either California or in Florida, the situs of
14 Sure Sports’ principal place of business.

15 4. Sure Sports recruited and solicited Kane to enter into a series of agreements for
16 Sure Sports to arrange for a series of loans from third party lenders. Sure Sports subsequently
17 recruited and solicited Kane to enter into loans with third party lenders.

18 5. In exchange for Sure Sports procuring “customized underwriting, banking, and
19 financing solutions” for Kane, the Agreements provided for Sure Sports to pay variety of fees
20 from Kane. These fees were characterized, variously, as “underwriting fees,” “savings fees,” and
21 “legal/closing fees.” Some of the fees charged by Sure Sports were paid out of the loan proceeds at
22 the time of closing, while some were “deferred,” and were paid to Sure Sports by the lender in
23 installments when the lender received installment payments from Kane. In practical effect all these
24 fees were charged by Sure Sports for its services provided in soliciting, arranging, and
25 documenting the loans for Kane.

26 6. Several of the agreements between Sure Sports and Kane were entered into while
27 Kane was a California resident and playing for the San Jose Sharks (“the Agreements”). The
28 Agreements included at least eight separate loan agreements from five different lenders, totaling

1 more than \$15.5 million in principal.

2 7. Kane in fact paid more than \$452,000.00 in fees to Sure Sports pursuant to
3 Agreements executed while Kane was a San Jose Sharks player and a California resident.

4 8. Sure Sports has filed a Proof of Claim in this proceeding claiming to be owed
5 \$1,187,950.94 in fees and interest pursuant to three of the Agreements.

6 9. Sure Sports' activities under the Agreements violated California law, namely
7 California's Miller-Ayala Athlete Agents Act (the "Miller-Ayala Act" or "Act"), Bus. & Prof.
8 Code section 18895 *et seq.* Sure Sports is therefore not entitled to recover any additional fees from
9 Kane, and must disgorge all fees collected under the Agreements and pay damages.

10 10. The Miller-Ayala Act provides that any legal or natural person that directly or
11 indirectly recruits or solicits a California athlete to enter into a financial services contract, is an
12 "athlete agent" and must comply with the requirements of the Act.

13 11. The Agreements are themselves "financial services contracts" within the meaning
14 of the Act, and also provide that Sure Sports would recruit or solicit Kane to enter into further
15 financial services contracts with lenders. Therefore, Sure Sports is an athlete agent within the
16 meaning of the Act.

17 12. Any athlete agent who does not comply with the Act is subject to the following
18 penalties: return of any fees or compensation received by the athlete agent pursuant to contracts
19 entered into while agent was in violation of the Act; compensatory and statutory damages;
20 punitive damages; and criminal liability.

21 13. Sure Sports did not comply with the Act by filing the required disclosures with the
22 California Secretary of State, and did not obtain the insurance or security bond required by the
23 Act. Nor did Sure Sports provide to Kane the disclosures required by the Act.

24 14. Trustee is entitled to restitution of all money paid by Kane to Sure Sports while
25 Kane was a California athlete—a minimum of \$452,414. Trustee is further entitled to recover
26 compensatory and statutory damages, reasonable attorneys' fees and costs, and prejudgment and
27 post-judgment interest.

28 15. Additionally, the Trustee is entitled to a declaration that Sure Sports may not

1 recover any funds from the Estate pursuant to its Statement of Claim.

2 **PARTIES**

3 16. Defendant Sure Sports is a Pennsylvania limited liability company with its
4 principal place of business registered at 1926 Hollywood Boulevard, #308, Hollywood, Florida.

5 17. Debtor Evander Kane is an individual. From on or about February 2018 until
6 January 2022, Kane played for the San Jose Sharks. During this time, Kane was a resident of San
7 Jose, California.

8 **JURISDICTION AND VENUE**

9 18. This Court has subject matter jurisdiction over this Adversary Proceeding pursuant
10 to 28 U.S.C. §§ 151, 157, 1334, and related provisions.

11 19. This Court has jurisdiction to determine whether this is a core proceeding pursuant
12 to 28 U.S.C. § 157(b)(3) and related provisions.

13 20. Venue is proper in this Court pursuant to 28 U.S.C. § 1409 and related provisions.

14 21. The Trustee consents to the entry of a final judgment by the Bankruptcy Court in
15 this Adversary Proceeding.

16 **FACTUAL ALLEGATIONS**

17 **The Miller-Ayala Act**

18 22. The Miller-Ayala Act was passed in 1997 with the stated intention by its primary
19 drafter of providing “the nation’s toughest laws relating to athlete agents.”

20 23. The Act covers both professional and student athletes. Cal. Bus. & Prof. Code
21 §18897 (Professional Athletes); §18897.6 (Student Athletes).

22 24. The Act defines “athlete agent,” in relevant part, as “any person who, directly *or*
23 indirectly, recruits *or* solicits an athlete to: enter into any agent contract, endorsement contract,
24 *financial services contract*, or professional sports services contract.” Cal. Bus. & Prof. Code
25 § 18895.2 (b)(1) (emphasis added).

26 25. The Act defines “financial services” as “the making or execution of an investment
27 or other financial decision, or counseling as to a financial decision.” Cal. Bus. & Prof. Code
28 § 18895.2(e).

1 26. The Act requires that any athlete agent file certain disclosures with the California
2 Secretary of State and provide certain prescribed information “prior to engaging in or carrying on
3 the business of an athlete agent.” Cal. Bus. & Prof. Code § 18896.

4 27. The Act requires “[e]very athlete agent shall provide security for claims against the
5 athlete agent or the athlete agent’s representatives or employees based upon acts, errors, or
6 omissions arising out of the business of the athlete agent through either one or an aggregate of
7 both of” an insurance policy or bond totaling at least \$100,000. Cal. Bus. & Prof. Code
8 § 18897.87.

9 28. The Act requires that “[u]pon making first contact, direct or indirect, with a
10 professional athlete...an athlete agent, or his or her employee or representative, shall provide that
11 person with a written notification stating” that the “athlete agent has current public-disclosure
12 information on file with the California Secretary of State as required by the Miller-Ayala Athlete
13 Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and
14 Professions Code, which also includes other protections for athletes.” Cal. Bus. & Prof. Code
15 § 18896.6.

16 29. The Act provides that “[n]o person shall owe an athlete agent any money or other
17 consideration pursuant to a... financial services contract... negotiated by the athlete agent if the
18 athlete agent fails to comply with this chapter... The athlete agent shall refund any money or other
19 consideration paid pursuant to that contract.” Cal. Bus. & Prof. Code § 18897.9(b).

20 30. The Act provides for a right to a civil action for recovery of damages from an
21 athlete agent who fails to comply with the Act and provides for remedies including recovery of
22 “actual damages, or fifty thousand dollars (\$50,000), whichever is higher; punitive damages; court
23 costs; and reasonable attorney’s fees.” Cal. Bus. & Prof. Code § 18897.8(a). “It is the intent of the
24 Legislature in enacting this section to encourage enforcement of this chapter through private civil
25 actions.” Cal. Bus. & Prof. Code § 18897.8(c)

26 31. An athlete agent who violates any provision of the Act is guilty of a misdemeanor,
27 “and shall be punished by a fine of not more than fifty thousand dollars (\$50,000), or
28 imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.” Cal.

1 Bus. & Prof. Code § 18897.93(a).

2 **Sure Sports' Business Model**

3 32. In legal filings submitted to this Court, Sure Sports says that it is “a full service
4 company that offers customized underwriting, banking, and financing solutions for professional
5 athletes.”

6 33. On its website, Sure Sports describes its business and services as follows:

- 7
- 8 • Sure Sports, established in 2009, *offers customized banking solutions* for
 - 9 professional athletes in the NFL, NBA, MLB, NHL, WNBA, and MLS.
 - 10 • We specialize in Contract-Based Financing but *offer a wide range of financial*
 - 11 *products*, including Pre-Draft Loans and McKenzie Mortgages[®], designed
 - 12 exclusively for professional athletes.
 - 13 • Our mission is to *provide better banking for athletes*.
 - 14 • Sure Sports *handles all aspects of the financing process*.
 - 15 • Established in 2009, Sure Sports *specializes in low-interest, unsecured loans and*
 - 16 *contract advances* to Professional Athletes in the National Football League (NFL),
 - 17 Major League Baseball (MLB), National Basketball Association (NBA), Women's
 - 18 National Basketball Association (WNBA), National Hockey League (NHL), and
 - 19 Major League Soccer (MLS) based on their player contracts.
 - 20 • We *customize these loans* to meet the needs of each individual Borrower.
 - 21 • Sure Sports *offers sports loans* to Pre-Draft players, players entering Free Agency
 - 22 or Arbitration and athlete mortgages.
 - 23 • Sure Sports *offers the fastest, cheapest loans to athletes*, and we can *complete and*
 - 24 *fund a loan* within 48 hours.
 - 25 • Due to our experience and expertise, Sure Sports is able to *provide athletes with*
 - 26 *loans and contract advances* that are low-cost and customized to the individual
 - 27 player, with no payments during the off-season.

19 (Emphasis added; true and correct printouts of website pages are attached as
20 Exhibit A hereto.)

21 34. In a legal filing seeking payment of fees from Kane, Sure Sports described its
22 “underwriting services” as follows, in relevant part:

- 23 a. Underwrite prospective loans and provide various services relating thereto,
- 24 including, without limitation, (a) provide an underwriting memo that provides a
- 25 summary of transaction recommendations and addresses frequently asked
- 26 questions, (b) recommend underwriting guidelines, (c) review necessary
- 27 underwriting materials, including, without limitation, a prospective borrower's
- 28 Personal Financial Statement, and (d) other professional recommendations
- necessary in order to determine a potential borrower's financial condition;
- b. Research, evaluate, and assess degree of risk regarding a potential borrower's
- ability to repay the Loan, including, without limitation, (a) provide a contract
- analysis, market analysis, and/or salary analysis for the potential borrower and/or

request an independent analysis relating thereto, (b) analyze potential borrower's professional history, including, without limitation, statistical performance and media projections, in order to project long-term career scenarios, (c) review the potential borrower's cash flow position throughout the entire proposed length of a loan and proposing repayment structures in order to meet financial needs of the parties, and (d) recommend mitigation factors in order to protect the potential lender from various risks of default while ensuring the potential borrower has sufficient cash flow for current obligations and expenses;

- c. Review potential borrower's credit history in order to review all active trade lines, any late payments, and any other information contained thereon for research and analytical purposes, background reports, and/or other necessary factors and/or due diligence materials, while also providing monitoring services (as needed, on a case by case basis);
- d. Obtain and/or handle insurance requirements;
- e. Monitor and/or handle banking accounts and/or payment obligations (pursuant to prior written approval);
- f. Assisting in the enforcement of payment obligations upon events of default and/or other material breaches of documents;
- g. Draft, review, finalize, and/or recommend necessary documents; and
- h. Coordinate closing for quality assurance and record keeping purposes.

35. Trustee is informed and believes, and on that basis alleges, that Sure Sports is not licensed as a bank, lender, or broker-dealer by any local, state, or federal agency.

36. Trustee is informed and believes, and on that basis alleges, that Sure Sports has not complied with the disclosure requirements and filed the requisite information with the California Secretary of State as an athlete agent pursuant to the Miller Ayala Act, Bus. & Prof. Code § 18896. Trustee submitted a public records request to the Office of the Secretary of State for any materials filed pursuant to an athlete agent disclosure under the Miller Ayala Act by Sure Sports, LLC, Sure Sports Lending, LLC, its founder and CEO Leon McKenzie, its Director of Operations, Joleen Matte, its client services associate Bryan Estevez, and its Legal Counsel Darren Heitner. The Secretary of State, Dr. Shirley N. Weber, confirmed that she had no records for any of these entities or individuals. Certificates of No Record from the Secretary of State's office are attached as Exhibit B hereto.

Relationship Between Kane and Sure Sports

37. Sure Sports and Kane entered into certain financial arrangements in approximately 2015 when Kane was introduced to Sure Sports to assist Kane in resolving significant financial issues.

1 38. Sure Sports, throughout its relationship with Kane, has engaged in one business
2 activity on behalf of Kane, that is, it has solicited and recruited Kane to enter into loan
3 agreements with various lenders identified by Sure Sports, with the expectation that Sure Sports
4 would be paid to arrange or attempt to arrange offers to fund a loan of money, or assist or advise
5 Kane in obtaining or attempting to obtain a loan of money.

6 39. In the beginning of their relationship, Sure Sports procured loans for Kane with
7 high interest rates. Over the next few years, Sure Sports engaged in a practice of procuring loan
8 after loan for Kane, with the subsequent loans paying off or down the prior loans. These loans
9 were often only months or weeks apart.

10 40. In connection with each contemplated loan, Sure Sports solicited Kane to enter
11 into an "Underwriting Agreement," which required that Kane pay tens or hundreds of thousands
12 of dollars to Sure Sports in fees.

13 41. In connection with each of these Underwriting Agreements, Sure Sports solicited
14 and recruited Kane to enter into a loan agreement with a lender. In each instance, Sure Sports
15 identified the lender, negotiated the terms of the loan agreement, and handled communications
16 with the lender.

17 42. Sure Sports insisted that Kane hire a "business manager" recommended by Sure
18 Sports, Tony Chiricosta of Pro Management Resources, Inc. ("PMR, Inc."). Kane had no
19 previous relationship with Chiricosta, and hired Chiricosta at the insistence of Sure Sports.

20 43. Chiricosta nominally represented Kane's interests in dealings with Sure Sports.
21 Correspondence and documents relating to the relevant Agreements was regularly addressed to
22 Kane "c/o, PMR Inc. 8012 Wiles Road Coral Springs, FL 33067."

23 44. At the insistence of Sure Sports, Chiricosta had access and control of Kane's bank
24 accounts, and the ability to directly authorize payments to Sure Sports and to lenders under the
25 loans brokered by Sure Sports.

26 **The Relevant Agreements Between Kane and Sure Sports**

27 45. On March 22, 2018 Sure Sports and Kane entered into a Fee Agreement, (the "Fee
28 Agreement," attached hereto as Exhibit C) that governs the terms and conditions under which

1 Sure Sports provided services, and charged fees, to Kane in connection with the relevant
2 Underwriting Agreements. The Fee Agreement states in relevant part, as follows:

3 WHEREAS, APPLICANT wishes to arrange financing via loans, lines of credit
4 and equity transactions ... in consideration of services rendered, APPLICANT
5 agrees to pay Sure Sports a service fee equal to 4% percent of the gross amount of
the loan or line commitment (not to be less than \$3,000) at the time of funds being
transferred from Lender to the Applicant.

6 46. Sure Sports solicited Kane to enter into the following Underwriting Agreements
7 with Sure Sports during the time Kane was a California resident.

8 47. California Bank and Trust Loan. On or around August 17, 2018, Sure Sports and
9 Kane entered into and executed an Underwriting Fee Payment Agreement regarding
10 Underwriting Services provided by Sure Sports for and on Kane's behalf for the purpose of Kane
11 receiving a loan from ZB, N.A. d/b/a California Bank and Trust (the "CB&T Underwriting Fee
12 Payment Agreement," attached hereto as Exhibit D) in the principal amount of \$4,250,000.00
13 (the "CB&T Loan").

14 48. Professional Bank Loan. On or around March 26, 2019, Sure Sports and Kane
15 entered into and executed an Underwriting Fee Payment Agreement regarding services provided
16 by Sure Sports for and on Kane's behalf for the purpose of Kane receiving a loan from
17 Professional Bank (the "Professional Bank Underwriting Fee Payment Agreement," attached
18 hereto as Exhibit E) in the principal amount of \$1,500,000.00 (the "Professional Bank Loan").

19 49. Centennial Bank Loan and Amendments. On or around September 5, 2018 Sure
20 Sports and Kane entered into and executed an Underwriting Fee Payment Agreement regarding
21 services provided by Sure Sports for and on Kane's behalf for the purpose of Kane receiving a
22 loan from Centennial Bank, for a principal amount of \$3,900,000. Kane and Sure Sports
23 subsequently entered into three amendments to the underwriting agreements, each of which
24 increased the principal of the Centennial loan: October 17, 2018 amendment for an additional \$2
25 million; February 28, 2019 amendment for an additional \$715,000; and April 30, 2019
26 amendment for an additional \$2,460,000 (collectively, the "Centennial Bank Loan"). Sure Sports
27 charged additional fees in connection with each of these amendments. The Underwriting
28 Agreements for the Centennial Bank Loan are attached hereto as Exhibit F.

1 50. South River Capital Loan. On or around March 22, 2018 Sure Sports and Kane
2 entered into and executed an Underwriting Fee Payment Agreement regarding services provided
3 by Sure Sports for and on Kane's behalf for the purpose of Kane receiving a loan from South
4 River Capital, for a principal amount of \$1,850,000 (the "South River Capital Loan"). The loan
5 documents for the South River Capital Loan are attached hereto as Exhibit G.

6 51. Thrivest Specialty Funding Loan. On or around December 30, 2018 Sure Sports
7 and Kane entered into and executed an Underwriting Fee Payment Agreement regarding services
8 provided by Sure Sports for and on Kane's behalf for the purpose of Kane receiving a loan from
9 Thrivest Specialty Funding, for a principal amount of \$405,000 (the "Thrivest Specialty Funding
10 Loan"). The loan documents for the Thrivest Specialty Funding Loan are attached hereto as
11 Exhibit H.

12 52. Each of the Underwriting Agreements states that "SSL provided underwriting
13 services to and for the Borrower for the purpose of the Borrower receiving the Loan."

14 53. Sure Sports was aware of Kane's status as a California resident and San Jose
15 Sharks player at the time each of the relevant Agreements was entered. By its own admission part
16 of the service provided by Sure Sports was to "Research, evaluate, and assess degree of risk
17 regarding a potential borrower's ability to repay the Loan, including... analyze potential
18 borrower's professional history, including, without limitation, statistical performance and media
19 projections, in order to project long-term career scenarios." This process would necessarily have
20 caused Sure Sports to learn of Kane becoming a Sharks player as of February 2018, an event that
21 was widely reported in the sports press.

22 54. Sure Sports did not, at any point after Kane became a California athlete in
23 February 2018, make to Kane the written disclosure required by Section § 18896.6 of the Act.

24 **Fees Paid by Kane to Sure Sports Under the California Agreements**

25 55. Kane paid the following amounts to Sure Sports pursuant to the Relevant
26 Agreements:

27 56. Zions Bank/CB&T loan (\$4,250,000 loan principal):

28 a. Underwriting fee: \$63,750 paid from loan proceeds

- b. Legal/closing fees: \$3,333.33 paid from loan proceeds
- c. Deferred underwriting and savings fees: \$28,973, paid in monthly installments from November 15, 2018 through April 15, 2019.
- 57. Professional Bank loan (\$1,500,000 loan principal):
 - a. Underwriting fee: \$48,750 paid from loan proceeds
 - b. Legal/closing fees: \$5,000 paid from loan proceeds
- 58. Centennial Bank Loans:
 - a. Initial loan (\$3,900,000 loan principal)
 - i. Service/Underwriting Fee \$58,500
 - ii. Legal/closing fee: \$3000
 - b. First amendment to loan (\$2,000,000 loan principal)
 - i. Legal/closing \$8000
 - ii. Underwriting (partial) \$30,000
 - iii. Deferred underwriting and savings fees paid from November 15, 2018 through April 15, 2019: \$51,496
 - c. Second Amendment (\$715,000 loan principal)
 - i. Service/Underwriting Fee \$23,280.04
 - ii. SSL Savings Fee \$19,344.04
 - iii. Legal/closing \$5,200.00
 - d. Third Amendment (\$2,460,000 loan principal)
 - i. Legal/closing fees \$7500
- 59. South River Capital (\$1,850,000 loan principal)
 - a. Underwriting \$74,000.00
 - b. Legal/closing \$7,500.00
- 60. Thrivent Specialty Funding (\$405,000 loan principal)
 - a. Underwriting \$13,162.50
 - b. Legal/closing \$1,625.90

1 61. In total, Kane paid at least \$452,414.31 in fees to Sure Sports pursuant to the
2 Agreements, during the time Kane was a California resident and played for the San Jose Sharks.

3 **Additional Fees Claimed by Sure Sports**

4 62. Sure Sports has filed a Proof of Claim in this Court, seeking payment of
5 \$1,187,950.94 based on additional fees and penalties purportedly due to Sure Sports pursuant to
6 the Underwriting Agreements relating to the CB&T Loan, Professional Bank Loan, and
7 Centennial Bank Loans.

8 63. Each of the Underwriting Agreements pursuant to which Sure Sports seeks to
9 recover funds in its Proof of Claim is a “financial agreement” within the meaning of the Act, was
10 entered into while Kane was a San Jose Sharks player and a California resident. Therefore Sure
11 Sports is not entitled to recover any compensation pursuant to these agreements. Bus. & Prof.
12 Code § 18897.9(b).

13 **FIRST CAUSE OF ACTION**

14 **(Violation of The Miller-Ayala Act, Bus. & Prof. Code §§ 18895, *et seq.*)**

15 64. Trustee realleges and incorporates the allegations of the preceding paragraphs as if
16 fully set forth herein.

17 65. Under the Miller Ayala Athlete Agents Act (the “Act”), any person or entity acting
18 as an “athlete agent” must register with the California Secretary of State. Bus. & Prof. Code
19 § 18895 *et seq.*

20 66. An “athlete agent” means “any person who, directly or indirectly, recruits or
21 solicits an athlete to enter into any agent contract, endorsement contract, financial services
22 contract, or professional sports services contract, or for compensation procures, offers, promises,
23 attempts, or negotiates to obtain employment for any person ... as a professional athlete.” Cal. Bus.
24 & Prof. Code § 18895.2(b)(1).

25 67. “Financial services” means “the making or execution of an investment financial
26 decision, or counseling as to a financial decision.” Cal. Bus. & Prof. Code § 18895.2(e).

1 68. Each of the Underwriting Agreements is a “financial services contract” within the
2 meaning of the Act because it is a contract for the “execution of an investment financial decision.”
3 Sure Sports directly or indirectly solicited Kane to enter into the Agreements.

4 69. Additionally, each of the Underwriting Agreements provides for Sure Sports to
5 recruit or solicit Kane to enter into further “financial services contracts” with third parties—
6 namely, the lender for the loan contemplated in the Underwriting Agreement. Sure Sports in fact
7 recruited and solicited Kane to enter into loan agreements with third party lenders in connection
8 with each of the Underwriting Agreements.

9 70. The Act requires that any athlete agent register with the California Secretary of
10 State and provide certain prescribed information “prior to engaging in or carrying on the business
11 of an athlete agent.” Cal. Bus. & Prof. Code § 18896.

12 71. Neither Sure Sports nor any of its principals is registered with the California
13 Secretary of State as an athlete agent, and has not filed with the Secretary of State any of the
14 information required by § 18896.

15 72. The Act requires “[e]very athlete agent shall provide security for claims against the
16 athlete agent or the athlete agent’s representatives or employees based upon acts, errors, or
17 omissions arising out of the business of the athlete agent through either one or an aggregate of
18 both of” an insurance policy or bond totaling at least \$100,000. Cal. Bus. & Prof. Code
19 § 18897.87.

20 73. Neither Sure Sports nor any of its principals provided the security required by
21 § 18897.87.

22 74. The Act requires that “[u]pon making first contact, direct or indirect, with a
23 professional athlete...an athlete agent, or his or her employee or representative, shall provide that
24 person with a written notification stating” that the “athlete agent has current public-disclosure
25 information on file with the California Secretary of State as required by the Miller-Ayala Athlete
26 Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and
27 Professions Code, which also includes other protections for athletes.” Cal. Bus. & Prof. Code
28 § 18896.6.

75. Sure Sports did not provide Kane with the written notification required by § 18896.6.

76. Because Sure Sports has failed to comply with the requirements of the Act, Trustee owes Sure Sports no money or other consideration, and pursuant to Cal. Bus. & Prof. Code § 18897.9(b) Sure Sports must refund all funds and other consideration paid to Sure Sports pursuant to the Agreement, an amount that is at minimum \$452,414,31.

77. As a result of Sure Sports' conduct as alleged herein, Trustee has been harmed and seeks actual and statutory damages of not less than \$50,000, punitive damages, attorney's fees and costs, and such other relief as the court deems proper, pursuant to Cal. Bus. & Prof. Code § 18897.8.

SECOND CAUSE OF ACTION

(Declaratory Relief)

78. Trustee realleges and incorporates the allegations of the preceding paragraphs as if fully set forth herein.

79. Sure Sports has filed a Proof of Claim in this action.

80. Trustee seeks a declaration that Sure Sports has no right to recover any amounts from the estate related to or in connection with the Agreements, and may recover nothing from its Proof of Claim.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Trustee prays for an award as follows:

- 3 1. For disgorgement of all amounts paid by Kane to Sure Sports during the time Kane
4 was a California resident, according to proof but no less than \$452,414.31;
- 5 2. For statutory damages against Sure Sports according to proof, but not less than
6 \$50,000;
- 7 3. For a declaration that Sure Sports has no right to recover any amounts from the
8 estate related to or in connection with the Agreements, and may recover nothing from its Proof of
9 Claim;
- 10 4. For an award of the Trustee's attorneys' fees and costs;
- 11 5. For pre-judgment and post-judgment interest; and
- 12 6. For such other and further relief as the Court deems just and proper.

13
14 DATED: September 13, 2022

PUTTERMAN YU WANG LLP

15
16 By: 

17 GEORGE CHIKOVANI
18 Special Counsel for FRED HJELMESET,
19 Trustee in Bankruptcy
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